





### Findings of Fact

The following facts were derived from the record file in this matter or determined from credibility determinations at the evidentiary hearing. Facts not stated herein are not deemed material to the pending Motion.

1. On July 12, 2007, Complainant filed a charge with the Department.
2. On or about July 12, 2007, Complainant signed a 300-day extension of time to continue the Department's investigation.
3. On or about July 31, 2007, Respondent signed a 300-day extension of time to continue the Department's investigation.
4. The Department had until May 7, 2009 to take action on the charge.
5. On July 25, 2008, Complainant filed the instant complaint with the Commission.
6. On September 22, 2008, Respondent filed its Motion to Dismiss.
7. The Commission had a status hearing on October 9, 2008. Respondent appeared. Complainant failed to appear.
8. On October 29, 2008, the Department filed a response to the Motion.
9. At the January 21, 2009 status hearing, Complainant moved for leave to file *instanter* his motion to file his late response, which was granted.
10. At the January 21, 2009 status hearing, Complainant was ordered to file a supplemental response to "explain whether the signature on the extension form is Complainant's."
11. Complainant filed his supplemental response, but failed to properly serve it on the Respondent.
12. On March 5, 2009, Respondent and the Department were granted additional time to file replies to Complainant's supplemental response.
13. On or about March 16, 2009, the Department issued a determination regarding Complainant's charge.
14. Complainant filed a request for review that is currently before the Department.

15. The Department filed its reply to the Motion on April 9, 2009; Respondent elected not to file a reply.
16. On May 7, 2009, I entered an order setting an evidentiary hearing on the limited issue “of whether or not Complainant signed the 300-day extension of time form.”
17. On June 18, 2009, an evidentiary hearing was held before me.
18. At the evidentiary hearing, Complainant, Respondent and the Department were represented by counsel.
19. The following people testified: Peter Palka, Tadeusz Palka, Hector Sanchez, and Wojceich Czarniecki.
20. Complainant’s testimony was not entirely credible.
21. Investigator Sanchez’s testimony was more credible than Complainant’s testimony.

#### **Conclusions of Law**

1. Complainant is an individual claiming to be aggrieved by a violation of the Illinois Human Rights Act, (“Act”), **775 ILCS 5/1-102 et seq.**
2. The Commission has the authority to determine whether jurisdiction over the Complaint exists.
3. Section 7A-102(G)(1) of the Act provides that after a charge has been filed, within 365 days thereof or within any extension of that period agreed to in writing by the parties, the Department has exclusive authority over the matter. **775 ILCS 7A-102(G)(1).**
4. The Department’s time period begins to run on the day a perfected, or verified, charge is filed.
5. Section 7A-102(G)(2) of the Act provides that an aggrieved party may individually file a complaint with the Commission within a 30-day filing period following the Department’s exclusive time period. **775 ILCS 102(G)(2).**
6. An aggrieved party may not file a complaint outside the 30-day time period provided by 7A-102(G)(2) of the Act.

7. If an aggrieved party files a complaint either before or after the 30-day period granted by 7A-102(G)(2), that complaint is a nullity and the Commission has no jurisdiction over it.
8. The Complaint is not timely because Complainant filed it while the charge was still under investigation at the Department.

### **Discussion**

Respondent requests that the Commission dismiss the complaint because the Complainant filed his complaint while the charge was still under investigation at the Department and because no events had occurred ceasing the Department's jurisdiction.

Pursuant to Section 7A-102(G)(1) of the Act, the Department has jurisdiction over a charge from its filing with the Department until the expiration of 365 days plus any agreed extensions, during which time the Department may dismiss the charge or file a complaint with the Commission. Pursuant to Section 7A-102(G)(2) of the Act, Complainant has a 30-day window to file a complaint with the Commission after the expiration of 365 days plus any agreed extensions after the filing of the charge with the Department.

If the Complainant signed the extension form, the Motion must be granted. The evidentiary hearing before me was to allow me to determine if Complainant signed that form. In his affidavit, Complainant states, in part, that the signature on the extension form is not his because he does not recall signing the extension form. However, the fact that Complainant cannot recall signing a document does not mean he did not sign the document. And although Complainant states in his affidavit that the signature is a good forgery, but is not his signature, I am not persuaded. In addition, at the evidentiary hearing, Complainant's testimony was confusing as to the signature. Further, Complainant appeared to have limited recall of the details surrounding the entire intake process and events. Moreover, Complainant only came forward with an affidavit after I required him to provide authenticity and response to an obvious question that he should have addressed earlier, *i.e.*, "Is the signature on the extension form

Complainant's signature?" Thus, a negative inference can be drawn from the fact that Complainant failed to come forward sooner.

Intake Coordinator Sanchez's testimony was credible and supports a finding that Complainant signed the extension form. The testimony indicated that Mr. Sanchez had no pressure to force Complainant to sign the extension form. Mr. Sanchez had no interest in the investigation of a charge, including the amount of time it takes to investigate a charge. (Tr. at 100). Mr. Sanchez's duties are solely related to the filing of a complaint; intake coordinators do not investigate charges. (Tr. at 87). Mr. Sanchez recalled the intake of Complainant. (Tr. at 110-111). Mr. Sanchez testified that Complainant had agreed to mediation. (Tr. at 114). Mr. Sanchez also testified that it is his regular practice to offer extensions to complainants who agree to mediation. (Tr. at 89).

Finally, several examples of Complainant's signatures were admitted into evidence, including the signatures verified by Complainant as his own on certain employment documents maintained by Respondent. The signature on the extension form bore a striking similarity to the documents Complainant admitted signing.

Accordingly, I find that Complainant signed the extension form. Since Complainant filed his complaint with the Commission before the expiration of the 365-days plus the 300-day extension, his complaint was premature and untimely. The complaint should be dismissed, but without prejudice, because the matter is still pending before the Department and there is a possibility that another complaint could be filed. Only the complaint, and not the underlying charge, should be dismissed.

**Recommendation**

I recommend that the Commission dismiss the complaint, without prejudice.

**HUMAN RIGHTS COMMISSION**

BY: \_\_\_\_\_  
REVA S. BAUCH  
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW DIVISION

ENTERED: OCTOBER 1, 2009